

ESTTA Tracking number: **ESTTA743795**

Filing date: **05/02/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Polar Music International AB		
Entity	Aktiebolag	Citizenship	Sweden
Address	Banergaten 16 P.O. Box 557 77 Stockholm, 114 83 SWEDEN		

Attorney information	Brent S. LaBarge Universal Music Group 2220 Colorado Avenue Santa Monica, CA 90404 UNITED STATES brent.labarge@umusic.com, nicole.villacorta@umusic.com Phone:3108651708
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Registration Subject to Cancellation

Registration No	4639812	Registration date	11/18/2014
Registrant	Hairston, Ephraimnece H 6600 Ridgeview Commons Drive Charlotte, NC 28269 UNITED STATES		

Goods/Services Subject to Cancellation

Class 028. First Use: 2013/06/24 First Use In Commerce: 2013/06/24 All goods and services in the class are cancelled, namely: Skateboard decks; Skateboards; Snowboards
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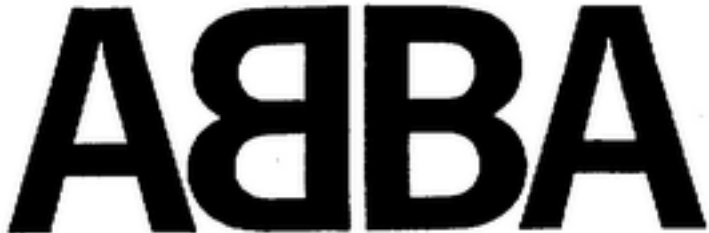
Grounds for Cancellation


Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Dilution by blurring	Trademark Act Sections 14(1) and 43(c)
Dilution by tarnishment	Trademark Act Sections 14(1) and 43(c)


Marks Cited by Petitioner as Basis for Cancellation


U.S. Registration No.	1072394	Application Date	08/04/1976
Registration Date	08/30/1977	Foreign Priority Date	NONE
Word Mark	ABBA		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 041. First use: First Use: 1974/01/01 First Use In Commerce: 1974/05/01 MUSICAL ENTERTAINMENT SERVICES BY A VOCAL AND INSTRUMENTAL GROUP


U.S. Registration No.	1072398	Application Date	10/06/1976
Registration Date	08/30/1977	Foreign Priority Date	NONE
Word Mark	ABBA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1974/01/01 First Use In Commerce: 1974/05/01 MUSICAL ENTERTAINMENT SERVICES BY A VOCAL AND INSTRUMENTAL GROUP		

U.S. Registration No.	3389319	Application Date	03/19/2003
Registration Date	02/26/2008	Foreign Priority Date	NONE
Word Mark	ABBA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2007/02/06 First Use In Commerce: 2007/02/06 PORCELAIN AND EARTHENWARE BEVERAGE GLASSWARE Class 025. First use: First Use: 2007/02/06 First Use In Commerce: 2007/02/06 T-SHIRTS, AND SWEATERS		

U.S. Registration No.	3862613	Application Date	06/25/2009
Registration Date	10/19/2010	Foreign Priority Date	NONE
Word Mark	ABBA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1974/08/17 First Use In Commerce: 1974/08/17 Pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs and DVDs and phonograph records featuring music and entertainment; theatrical and musical sound and video recordings; downloadable ring tones, music, MP3 files, graphics, images and videos for wireless communication devices in the field of music and entertainment; downloadable music, MP3 files, graphics, images and videos in the field of music and entertainment		

U.S. Registration No.	4125830	Application Date	06/29/2009
Registration Date	04/10/2012	Foreign Priority Date	NONE
Word Mark	ABBA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1974/08/17 First Use In Commerce: 1974/08/17 Books and magazines in the fields of music, entertainment, art and/or culture; address books; appointment books; calendars; greeting cards; post cards; pen and pencil cases; pencil sharpeners; pens; pencils; date books; bumper stickers; decals; note pads; stickers; posters; trading cards; stationery		

U.S. Registration No.	4347054	Application Date	03/23/2010
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Registration Date	06/04/2013	Foreign Priority Date	NONE
Word Mark	ABBA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2007/02/28 First Use In Commerce: 2007/02/28 computerized on-line ordering services in the field of music; computerized online retail store services in the field of music; computerized on-line gift ordering services which matches the gift giver's requirements with the gift recipient's wants and needs; mail order catalog services featuring CD's, cassettes, DVD's featuring music and music-related entertainment and clothing; on-line retail store services featuring downloadable pre-recorded music and audio-visual content featuring music and music-related entertainment and clothing; organization of promotions using audio-visual media; preparing audio-visual displays in the field of music; providing information about the goods and services of others via a global computer network; retail store services available through computer communications and interactive television featuring CD's, cassettes, DVD's, videocassettes		

Attachments	73102314#TMSN.png(bytes) 76498526#TMSN.png(bytes) 77768340#TMSN.png(bytes) 77770150#TMSN.png(bytes) 77966036#TMSN.png(bytes) 2016-05-02 Petition to Cancel -- ABBA Reg. No. 4639812.pdf(299159 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Brent S. LaBarge/
Name	Brent S. LaBarge
Date	05/02/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Registration No. 4639812

POLAR MUSIC INTERNATIONAL AB,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
EPHRAIMNECE H. HAIRSTON,)	
)	
Respondent.)	
)	

PETITION TO CANCEL

Polar Music International AB, a Swedish joint stock company with a business address at Banergaten 16, P.O. Box 557 77, 114 83 Stockholm, Sweden, believes that it is being damaged and will continue to be damaged by Ephraimnece H. Hairston's ("Respondent's") registration for ABBA & Design (the "Contested Mark"), as set forth in Registration No. 4639812 ("Respondent's Registration"), and hereby petitions to cancel the same pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064, and Section 2.111 of the Trademark Rules of Practice, 37 C.F.R. § 2.111.

As grounds therefor, Petitioner alleges as follows:

I. PETITIONER'S RIGHTS IN ITS MARKS

1. For many years, Polar Music International AB and its predecessors-in-interest and licensees (collectively, as applicable, "Petitioner") have continuously used, and Petitioner is currently using, the ABBA trademarks and service marks (collectively, "Petitioner's Marks") in interstate and foreign commerce in connection with music- and entertainment-related goods and services and a wide array of merchandising.

2. Petitioner's Marks are inherently distinctive and strong and are therefore entitled to a broad scope of protection.

3. As a result of Petitioner's extensive, exclusive, and continuous use of Petitioner's Marks and substantial promotion of the goods and services offered under these marks, and by virtue of the quality of the goods and services offered under these marks, Petitioner's Marks have become associated exclusively with Petitioner and its goods and services. Consumers have come to rely on Petitioner's Marks to identify Petitioner's goods and services and to distinguish them from the goods and services of its competitors. As such, Petitioner's Marks have developed extensive goodwill and consumer recognition and have become famous and well-known in the United States and throughout the world.

4. Petitioner's Marks are the subject of the following U.S. trademark and service mark registrations owned by Petitioner: (1) Registration No. 1072394 for ABBA for use in connection with the International Class 41 services recited therein; (2) Registration No. 1072398 for ABBA in stylized form for use in connection with the International Class 41 services recited therein; (3) Registration No. 3389319 for ABBA for use in connection with the International Class 21 and 25 goods recited therein; (4) Registration No. 3862613 for ABBA for use in connection with the International Class 9 goods recited therein; (5) Registration No. 4125830 for ABBA for use in connection with the International Class 16 goods recited therein; and (6) Registration No. 4347054 for ABBA for use in connection with the International Class 35 services recited therein. True and correct copies of printouts from the U.S. Patent and Trademark Office's online Trademark Electronic Search System ("TESS") database showing the current status and title of the foregoing registrations are attached collectively hereto as Exhibit 1.

5. The foregoing registrations are valid, subsisting, and in full force and effect. These registrations constitute evidence of the validity of the registered marks and of the registrations thereof, of Petitioner's ownership of the marks, and of Petitioner's exclusive right to use the marks in commerce in connection with the identified goods and services pursuant to Section 7(b) of the Lanham Act, 15 U.S.C. § 1057(b). Such registrations place others on constructive notice of Petitioner's claim of ownership thereof pursuant to Section 22 of the Lanham Act, 15 U.S.C. § 1072.

6. Petitioner's Registration Nos. 1072394, 1072398, and 3389319 are incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, and thus serve as *conclusive* evidence of Petitioner's exclusive right to use these marks in connection with the goods and services identified in these registrations pursuant to Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b).

7. Petitioner also owns common law rights in Petitioner's Marks based on its extensive use and promotion of such marks in interstate and foreign commerce for decades.

II. RESPONDENT'S REGISTRATION

8. On December 6, 2013, Respondent filed an application to register ABBA BOARDS (which was later amended to the Contested Mark) for use in association with "skateboard decks; skateboards; [and] snowboards" in International Class 28, which was assigned Serial No. 86136870 (the "Application").

9. At the time Respondent filed the Application, Respondent listed June 24, 2013, as the date on which the Contested Mark was allegedly first used anywhere in connection with the foregoing goods.

10. Respondent's Registration issued on November 18, 2014.

11. Petitioner acquired rights in Petitioner's Marks long before Respondent filed the Application, long before any commercial use by Respondent of the Contested Mark, and long before any priority date upon which Respondent may rely.

III. LIKELIHOOD OF CONFUSION

12. The Contested Mark, as used in association with the goods recited in Respondent's Registration, is so similar to Petitioner's Marks as to be likely to create confusion, mistake, or deception as to the source, sponsorship, or affiliation of Respondent's goods in the minds of consumers and persons in the trade for the following reasons, among others:

13. The Contested Mark is virtually identical to each of Petitioner's Marks in sight, sound, and commercial meaning.

14. The goods recited in Respondent's Registration are identical and/or closely related to the goods and services offered by Petitioner in connection with Petitioner's Marks.

15. On information and belief, Respondent's goods offered in connection with the Contested Mark, if any, and the goods and services offered under Petitioner's Marks are likely to be sold, marketed, and/or offered to the same classes of consumers.

16. On information and belief, the channels of trade for Respondent's goods offered in connection with the Contested Mark, if any, and the channels of trade for Petitioner's goods and services offered under Petitioner's Marks are the same.

17. The continued use and/or registration of the Contested Mark for the goods listed in Respondent's Registration is thus likely to cause confusion or mistake, or to deceive the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

IV. DILUTION

18. Petitioner's Marks are distinctive and have been used by Petitioner for many years (and still are being used by Petitioner) in connection with a wide variety of goods and services offered by Petitioner.

19. Petitioner's Marks are famous.

20. Petitioner's Marks became famous long before Respondent filed the Application, long before any commercial use by Respondent of the Contested Mark, and long before any priority date upon which Respondent may rely.

21. The continued use and/or registration of the Contested Mark for the goods listed in Respondent's Registration is thus likely to dilute the distinctiveness of Petitioner's Marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

V. INJURY TO PETITIONER

22. The continued existence of Respondent's Registration would be inconsistent with Petitioner's prior exclusive rights in Petitioner's Marks and would threaten to destroy Petitioner's investment and goodwill in such marks. Petitioner thus would be injured by the continued registration of Respondent's Registration.

23. The continued existence of Respondent's Registration further damages Petitioner, as the registration confers upon Respondent various statutory presumptions to which Respondent is not entitled given Petitioner's longstanding prior use of Petitioner's Marks.

24. The continued existence of Respondent's Registration would weaken the strength and reputation of Petitioner's Marks, resulting in damage and injury to Petitioner.

WHEREFORE, Petitioner respectfully requests that this petition to cancel be granted; that Respondent's Registration be cancelled; and that Petitioner be granted such other and further

relief as may be just. This petition to cancel is submitted electronically and the undersigned hereby authorizes the payment of all official filing fees or any other fees due from Deposit Account No. 50-4955.

Dated: May 2, 2016

Respectfully submitted,

POLAR MUSIC INTERNATIONAL AB

By: s/Brent S. LaBarge/
Brent S. LaBarge
c/o Universal Music Group
2220 Colorado Avenue
Santa Monica, California 90404
Telephone: (310) 865-1708
Email: brent.labarge@umusic.com

Attorneys for Petitioner Polar Music International AB

EXHIBIT 1



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Typed Drawing

Word Mark ABBA

Goods and Services IC 041. US 107. G & S: MUSICAL ENTERTAINMENT SERVICES BY A VOCAL AND INSTRUMENTAL GROUP. FIRST USE: 19740101. FIRST USE IN COMMERCE: 19740501

Mark Drawing Code (1) TYPED DRAWING

Serial Number 73095533

Filing Date August 4, 1976

Current Basis 1A

Original Filing Basis 1A

Registration Number 1072394

Registration Date August 30, 1977

Owner (REGISTRANT) POLAR MUSIC INTERNATIONAL AB CORPORATION SWEDEN
MARIEHALLSVAGEN 35 BROMMA SWEDEN

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record DeAnne H. Ozaki

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20070919.

Renewal 1ST RENEWAL 20070919

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Word Mark ABBA**Goods and Services** IC 041. US 107. G & S: MUSICAL ENTERTAINMENT SERVICES BY A VOCAL AND INSTRUMENTAL GROUP. FIRST USE: 19740101. FIRST USE IN COMMERCE: 19740501**Mark Drawing Code** (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM**Serial Number** 73102314**Filing Date** October 6, 1976**Current Basis** 1A**Original Filing Basis** 1A**Registration Number** 1072398**Registration Date** August 30, 1977**Owner** (REGISTRANT) POLAR MUSIC INTERNATIONAL AB CORPORATION SWEDEN
MARIEHALLSVAGEN 35 BROMMA SWEDEN**Assignment Recorded** ASSIGNMENT RECORDED**Attorney of Record** DeAnne H. Ozaki**Type of Mark** SERVICE MARK**Register** PRINCIPAL**Affidavit**

Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20070919.

Renewal 1ST RENEWAL 20070919

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ABBA

Word Mark	ABBA
Goods and Services	IC 021. US 002 013 023 029 030 033 040 050. G & S: PORCELAIN AND EARTHENWARE BEVERAGE GLASSWARE. FIRST USE: 20070206. FIRST USE IN COMMERCE: 20070206
	IC 025. US 022 039. G & S: T-SHIRTS, AND SWEATERS. FIRST USE: 20070206. FIRST USE IN COMMERCE: 20070206
Mark Drawing Code	(1) TYPED DRAWING
Trademark Search Facility Classification Code	LETS-2 ABBA Two letters or combinations of multiples of two letters
Serial Number	76498526
Filing Date	March 19, 2003
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	November 18, 2003
Registration Number	3389319
Registration Date	February 26, 2008
Owner	(REGISTRANT) POLAR MUSIC INTERNATIONAL AB. CORPORATION SWEDEN Banergaten 16 P. O. Box 557 77 Stockholm, 114 83 SWEDEN
Attorney of Record	Brent LaBarge

Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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ABBA

Word Mark

ABBA

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs and DVDs and phonograph records featuring music and entertainment; theatrical and musical sound and video recordings; downloadable ring tones, music, MP3 files, graphics, images and videos for wireless communication devices in the field of music and entertainment; downloadable music, MP3 files, graphics, images and videos in the field of music and entertainment. FIRST USE: 19740817. FIRST USE IN COMMERCE: 19740817

Standard Characters Claimed

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Trademark Search Facility Classification Code

LETS-2 ABBA Two letters or combinations of multiples of two letters

Serial Number

77768340

Filing Date

June 25, 2009

Current Basis

1A

Original Filing Basis

1A

Published for Opposition

August 3, 2010

Registration Number

3862613

Registration Date

October 19, 2010

Owner (REGISTRANT) Polar Music International AB CORPORATION SWEDEN Mariehallsvagen35
Bromma SWEDEN

**Attorney of
Record** DeAnne H. Ozaki

**Prior
Registrations** 1072394;1072398;3389319

Type of Mark TRADEMARK

Register PRINCIPAL

**Live/Dead
Indicator** LIVE

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ABBA

Word Mark ABBA

Goods and Services IC 016. US 002 005 022 023 029 037 038 050. G & S: Books and magazines in the fields of music, entertainment, art and/or culture; address books; appointment books; calendars; greeting cards; post cards; pen and pencil cases; pencil sharpeners; pens; pencils; date books; bumper stickers; decals; note pads; stickers; posters; trading cards; stationery. FIRST USE: 19740817. FIRST USE IN COMMERCE: 19740817

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77770150

Filing Date June 29, 2009

Current Basis 1A

Original Filing Basis 1B

Published for Opposition June 14, 2011

Registration Number 4125830

Registration Date April 10, 2012

Owner (REGISTRANT) Polar Music International A.B. CORPORATION SWEDEN Banergaten 16 Stockholm

SWEDEN 11483

**Attorney of
Record**

DeAnne H. Ozaki

**Prior
Registrations**

1072394;1072398;3389319

Type of Mark TRADEMARK**Register** PRINCIPAL**Live/Dead
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ABBA

Word Mark ABBA

Goods and Services IC 035. US 100 101 102. G & S: computerized on-line ordering services in the field of music; computerized online retail store services in the field of music; computerized on-line gift ordering services which matches the gift giver's requirements with the gift recipient's wants and needs; mail order catalog services featuring CD's, cassettes, DVD's featuring music and music-related entertainment and clothing; on-line retail store services featuring downloadable pre-recorded music and audio-visual content featuring music and music-related entertainment and clothing; organization of promotions using audio-visual media; preparing audio-visual displays in the field of music; providing information about the goods and services of others via a global computer network; retail store services available through computer communications and interactive television featuring CD's, cassettes, DVD's, videocassettes. FIRST USE: 20070228. FIRST USE IN COMMERCE: 20070228

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77966036

Filing Date March 23, 2010

Current Basis 1A

Original Filing Basis 1B

Published for Opposition July 19, 2011

Registration 4347054

Number**Registration
Date**

June 4, 2013

Owner(REGISTRANT) Polar Music International AB CORPORATION SWEDEN Banergaten 16, P.O. Box 557
77 Stockholm SWEDEN 11483**Attorney of
Record**

Brent LaBarge

**Prior
Registrations**

1072394;1072398;3389319;AND OTHERS

Type of Mark SERVICE MARK**Register** PRINCIPAL**Live/Dead
Indicator** LIVE[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[SEARCH OG](#)[TOP](#)[HELP](#)[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition to Cancel has been served on Respondent by mailing said copy on May 2, 2016, via First Class Mail, postage prepaid, to:

Ephraimnece H. Hairston
6600 Ridgeview Commons Drive
Charlotte, NC 28269

s/Brent S. LaBarge/

Brent S. LaBarge